

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

Claimant,

vs.

Westside Regional Center,

Service Agency.

OAH No. 2022120374

DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on July 6, 2023, by videoconference, in Los Angeles, California.

Candace Hein, Appeal Specialist and Attorney, appeared and represented Westside Regional Center (WRC or Service Agency).

Melissa Hein, Attorney, appeared and represented Claimant. Claimant's father was present throughout hearing. (Claimant and her family members will be referred to by title only to protect their privacy.)

At the conclusion of the hearing on July 6, 2023, the ALJ ordered the parties, based on the parties' stipulation, to submit written closing briefs on July 14, 2023. At

hearing, the ALJ incorrectly indicated to the parties that the decision due date would be August 4, 2023. In fact, the decision will be due on July 28, 2023. No further testimonial evidence or legal argument was deemed necessary.

On July 14, 2023, the parties filed their respective closing briefs. The closing brief filed by Claimant was marked as Exhibit M for identification; the closing brief filed by Service Agency was marked as Exhibit 18 for identification.

The matter was submitted on July 14, 2023.

ISSUE

Is Claimant eligible for regional center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare & Institutions Code § 4500 et seq. (Lanterman Act)? (All further statutory references are to the Welfare and Institutions Code.)

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-18; Claimant's exhibits A-I and L-M.

Testimonial: Thompson J. Kelly, Ph.D.; Caroline Grantz, Ph.D.; Jerry Turner, Ph.D.; Claimant's father.

FACTUAL FINDINGS

1. Claimant is a 17-year-old transgender person (natal male; preferred pronouns: she/her/hers) who lives with her fathers and twin brother. (She will turn 18

in four months). Claimant's Autism Spectrum Disorder (ASD) diagnosis is not in dispute.

2. By Notice of Proposed Action (NOPA) dated October 17, 2022, WRC informed Claimant that although she has an ASD diagnosis, she is not eligible for regional center services because her diagnosis is not a substantial disability in three or more major life areas. (Exh. 3.)

3. Claimant timely filed a fair hearing request. (Exh. 3.)

Regional Center

DR. LEVY-WRIGHT'S PSYCHOLOGICAL EVALUATION OF CLAIMANT

4. As part of Claimant's application process, Service Agency conducted a psychological assessment and psychological evaluation of Claimant. WRC commissioned Beth Levy-Wright, Ph.D. to conduct an in-person psychological evaluation of Claimant, which occurred on July 27, 2022. (Exh. 7.) Dr. Levy-Wright diagnosed Claimant with ASD with accompanying language impairment and without accompanying cognitive impairment; deficits in verbal/nonverbal social communication at Severity Level 2, Requiring Substantial Support; and rituals and repetitive behaviors at Severity Level 2, Requiring Substantial Support. (Exh. 7, p. A54-A55.)

5. Dr. Levy-Wright's diagnosis was based on testing Claimant using the Gilliam Autism Rating Scale (GARS). Claimant obtained an Autism Index Score of 106; suggesting "Very Likely Probability of ASD – Level 3 – Requiring Very Substantial Support." (Exh. 7, p. A50.) The Autism Diagnostic Observation Schedules was also administered, returning an SA+RRB score of 14 (cutoff=10), which was significant. (*Id.*

p. A52.) In sum, Dr. Levy-Wright reported the following findings for Claimant in the area of social communication and social interaction across contexts: deficits in social-emotional reciprocity; nonverbal communicative behaviors used for social interaction; and developing, maintaining, and understanding relationships. In the area of restricted, repetitive patterns of behaviors, interests, or activities, Dr. Levy-Wright reported the following findings: stereotyped or repetitive motor movements; insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; highly restricted, fixated interests that are abnormal in intensity or focus; and, hyper-hypo reactive to sensory input or unusual interest in sensory aspects of the environment. (*Ibid.*)

WRC MULTIDISCIPLINARY OBSERVATION

6. Service Agency reviewed reports submitted by Claimant in support of her application and Dr. Levy-Wright's psychological evaluation report, and Service Agency conducted a 30-minute virtual multidisciplinary observation of Claimant on October 6, 2022. (Exh. 8.) The multidisciplinary eligibility team concluded, in sum, as follows:

[Claimant] presented as a sullen teenager who was cooperative with the interview process. She has capacity to perform age-appropriate self-care tasks. [Claimant] is mobile and does not rely on assistance to walk and there are no language concerns or evidence of challenges with learning.

Although the psychological evaluation by Dr. Beth Levy provides a diagnosis of Autism Spectrum Disorder, the consensus of the eligibility team was that [Claimant's]

overall presentation did not reflect a child substantially disabled (in three or more areas) by a developmentally-informed disability. Reported challenges reflect a teenager impacted by mental health conditions. During the observation, [Claimant] did not demonstrate repetitive, restricted interests or behaviors. She did not use any stereotyped, atypical, or idiosyncratic speech. [Claimant] did not demonstrate insistence on sameness or evidence sensory issues. Due to the observation and review of information gathered, [Claimant] is not eligible for Regional Center Services. Recommendations include consistent mental health and psychiatric supports.

(Exh. 8, p. A70.)

7. After the multidisciplinary meeting, Service Agency determined although Claimant has ASD, she is not substantially disabled by that diagnosis and, therefore, is not eligible for regional center services and supports. On October 17, 2022, Service Agency issued the NOPA. Parents appealed the determination and the fair hearing ensued.

HEARING TESTIMONY OF DR. KELLY

8. Thompson J. Kelly, Ph.D., WRC's Director of Clinical Services and licensed psychologist testified at hearing as to the Lanterman Act's eligibility criteria, past evaluations of Claimant, and Service Agency's process of eligibility determinations. Dr. Kelly was not designated as an expert at hearing by WRC. Dr. Kelly explained WRC looks at two factors to determine eligibility: whether an individual meets the

diagnostic criteria for a developmental disability and whether the disability is substantially disabling, as defined in section 4512. For substantial disability, there are seven categories considered by Service Agency: self-care, self-direction, receptive and expressive language, mobility, capacity for independent living, and economic self-sufficiency. When determining eligibility, WRC did not consider Claimant's economic self-sufficiency and capacity for independent living in any detail based on the fact Claimant is a minor and was classified as dependent on her parents for living and financial needs. Dr. Kelly explained that for the purpose of evaluating whether Claimant was eligible for Lanterman Act services, Claimant's ASD had to be the sole cause of any substantial disability exhibited by Claimant. When questioned where in the Lanterman Act there was any expressed requirement that substantial disability be solely caused by the qualifying diagnosis, Dr. Kelly responded that such an approach was based on WRC's interpretation of the Lanterman Act.

9. Dr. Kelly did not personally observe Claimant and did not formally evaluate Claimant, heavily relying on the multidisciplinary team conclusions from the 30-minute remote observation of Claimant to inform his conclusions about Claimant's eligibility. Claimant submitted multiple assessments by several independent providers, in addition to WRC's Dr. Levy-Wright's psychological evaluation. (Claimant's assessments will be discussed below to the extent they are in dispute by the parties.) Dr. Kelly reviewed and agreed with some of the written materials. He noted Claimant has a substantial impairment in self-direction, but not in any of the other six categories.

10. Dr. Kelly testified he had no reason to believe Dr. Levy-Wright's observation of Claimant was incorrect. However, he disagreed with Dr. Levy-Wright's conclusion Claimant was substantially disabled in the area of social communication. Dr.

Kelly asserted the GARS instrument used by Dr. Levy-Wright to assess Claimant's social communication was a subjective instrument and, therefore, the measure of Claimant's cognitive functioning in the area of Verbal Comprehension in the Very Superior range (99.9th percentile) based on the Wechsler Adult Intelligence Scale-IV (WAIS-IV) was a more reliable measure of Claimant's language ability than Dr. Levy-Wright's assessment using the GARS, and the WAIS-IV indicated no substantial disability in this area. Dr. Kelly characterized Claimant as high functioning primarily based on her intelligence measures and attributed disability in Claimant's daily functioning as likely stemming from her co-occurring mental health conditions (i.e., depression and anxiety), rather than Claimant's ASD. (No empirical data was cited by Dr. Kelly to support the latter opinion.)

11. As a result, Dr. Kelly opined Claimant was ineligible for regional center services. Essentially, Dr. Kelly articulated WRC's position as being based on the opinion there was a difference between having the ability to do a task and not wanting to do it. For example, Claimant has the capacity for self-care, such as bathing, changing her clothes, and taking her medication, but chooses not to do that because of self-direction issues which negatively affect that capacity. Accordingly, Dr. Kelly did not consider Claimant's lack of regular toileting and grooming and failure to take her medication to be substantial disabilities in the categories of capacity for independent living or self-care. Dr. Kelly further opined Claimant's social communication and interaction deficits also fell under the category of self-direction for purposes of assessing eligibility.

12. Dr. Kelly further opined that, based on his review of Dr. Levy-Wright's evaluation and the 2019 UCLA psychodiagnostics testing report submitted by Claimant to WRC, Claimant's psychiatric and mental conditions, such as Claimant's depression

and anxiety, was the source of Claimant's behavioral challenges; Dr. Kelly concluded Claimant's challenges were emotional, rather than developmentally based ASD. (Exh. 9.) Dr. Kelly also asserted Claimant's behaviors were inconsistent with ASD, testifying that Claimant's preoccupation with issues of fairness, perceived slights, and sustained tantrums, for example, did not present like ASD. Dr. Kelly opined once Claimant's co-morbidities were properly addressed through mental health services, she could potentially mature into high functioning societal roles, such as a college professor, occupied by other above average intelligent individuals diagnosed with ASD. In sum, Dr. Kelly opined that for Claimant to be considered eligible for regional center services her observed disabling behaviors would have to be based solely on ASD, which was not established in Claimant's case.

Claimant

13. Claimant is a special education student enrolled at Westview School of Arts and Technology - The Help Group (Westview) at the recommendation of her public school district. Claimant submitted numerous documents to WRC as part of her application for regional center supports and services and additional documents at hearing as part of her appeal of Service Agency's finding denying her eligibility.

14. The documents include a 2019 independent psychodiagnostics testing report from UCLA; a July 2021 functional behavioral assessment (FBA) from the Beverly Hills School District (BHUSD); a June 2021 assessment for educationally related intensive counseling services (ERICS) from the Tri-City SELPA for the BHUSD; an updated assessment for ERICS from the Tri-City SELPA for the BHUSD; a June 2021 BHUSD special education multi-disciplinary report, an independent educational evaluation (IEE) requested by the BHUSD; an IEP dated March 31, 2022, an IEP dated March 31, 2023; and a May 2023 University of California, Los Angeles (UCLA), Child

and Adult Neurodevelopmental (CAN) Clinic letter regarding Claimant's research assessment as part of her participation in an imaging network project for children and adolescents with ASD. (Exhs. A1, C-I, and L.)

15. Claimant has previously been diagnosed with ASD, Attention-Deficit/Hyperactivity Disorder (ADHD), gender identity disorder, major depressive disorder, and generalized anxiety disorder. Claimant is eligible for special education services under the categories of other health impairment (OHI) and emotional disturbance (ED). She has received the diagnosis of ASD from at least two assessments, conducted by Dr. Levy-Wright's and Caroline Grantz's, Ph.D., respectively indicating her condition is substantially disabling in the areas of expressive and receptive communication, self-care, self-direction, capacity for independent living, and economic self-sufficiency. In addition, Jerry Turner, Ph.D., who performed Claimant's IEE, opined Claimant's ASD was substantially disabling, as more fully addressed below.

BACKGROUND

16. Claimant's history includes significant behavioral outbursts in the school and home setting. She has required support for transitions from an early age (i.e., going to school and getting out of the pool). In first grade, Claimant trashed her classroom. As a result of the incident, Claimant took a leave of absence and began attending intensive behavior therapy. Claimant was able to successfully complete second and third grade without major behavioral concerns in the school setting. She continued to have significant outbursts when needing to transition between activities and had difficulty with social functioning, exhibiting rigidity in her beliefs and sensitivity to perceived slights, resulting in verbal altercations with peers and her twin brother. (Exh. A.)

17. Psychotherapy was re-initiated in fourth and fifth grade after Claimant's emotional and behavioral functioning continued to decline. (Exh. A.) Claimant's above-average intelligence contributed to her academic performance until she reached middle school. Claimant began to have numerous behavioral incidents at school, with students and with an expressed desire to self-harm. Claimant's behavior in the home setting also became more violent, destructive, and volatile when frustrated. Behavioral therapy was sought by the parents to address Claimant's behavior. Claimant refused to attend therapy when she was in sixth grade. (*Ibid.*)

18. A violent incident was reported at age 12, resulting from Claimant's parents limiting Claimant's time playing video games. (Exh. A.) Claimant locked herself in her room and repeatedly banged her head against her headboard; the fire department was called to break down Claimant's door. Around that time, Claimant's parents had Claimant see a psychiatrist at UCLA based on concerns about Claimant's functioning, including her inability to manage disappointment, everyday interactions with her sibling, parents, and peers, and violent outbursts at home. (*Ibid.*)

19. Claimant's psychiatrist referred Claimant to the UCLA Semel Institute to undergo comprehensive psychodiagnostics testing, performed in spring 2019 by Dr. Grantz. (Exh. A.) As noted above, Dr. Grantz diagnosed Claimant with ASD and recommended interventions and supports, including regional center eligibility. In summer 2019, Claimant's parents had Claimant start seeing a behavioral therapist who specialized in teenagers with ASD. Claimant refused to attend therapy after approximately six to nine months. Claimant's extreme rigidity and low frustration tolerance continued to be an issue at home, with Claimant having frequent behavioral incidents. (*Ibid.*)

20. In July 2019, Claimant became violent, destroying furniture, breaking dishes, beating one of her parents with a large metal pole, and grabbing and scratching her other parent. (Exh. A.) The episode was triggered by Claimant's parent attempting to set a limit of not going out to eat as a family based on Claimant's behavior that day. During the incident, Claimant ran up three flights of stairs onto the roof of her building and was pulled off the ledge by her father as she tried to jump off the roof. The paramedics arrived while Claimant was on the roof and took Claimant to Resnick Neuropsychiatric Hospital (Resnick) at UCLA, placing her on a 5150 hold. (Section 5150 provides for a 72-hour involuntary hold for a person exhibiting some type of mental psychosis or distress.) Claimant was admitted and spent approximately a week at Resnick under observation and was prescribed an antipsychotic used to treat irritability due to ASD. (*Ibid.*)

21. Claimant's violent episodes continued into the fall of 2019. She would often come home from school enraged, complaining of being excluded and upset by something someone had said. (Exh. A.) In November 2018, Claimant attacked her brother at school, hitting him in the face with her fists, claiming he had been turning people against her. Claimant used profanity against the school administrator who pulled her from her brother. Claimant was suspended for three days because of the incident. (*Ibid.*)

22. Claimant attended school at home from March 2020 until May 2021 due to the COVID-19 pandemic. (Exh. A.) Her behavior continued to be volatile, as reported by her parents. She had trouble with transition, initiation of tasks, failed to complete homework, and would spend the day in bed in response to minor setbacks (i.e., her microphone malfunctioning in band class). During that period, Claimant's parents called public safety to the home on four or five occasions when Claimant engaged in

property-destruction rages due to fears for her and their safety. For example, Claimant destroyed her room, toppled the kitchen island, and attacked her brother's door with a carving knife after which she eloped barefoot. (*Ibid.*)

23. Claimant's parents did not believe it was safe to send her back to public school in the fall of 2021 based on her observed pandemic behaviors and outbursts. (Exh. A.) At parents' request, BHUSD evaluated Claimant based on her ASD in spring 2021. Claimant was then enrolled at Westview. In March 2022, Claimant was found eligible for special education services under the categories of autism and emotional disturbance and provided an IEP. Claimant's continued placement at Westview with weekly counseling services was recommended by BHUSD. Claimant was reported to have made some progress on her behavioral goals under the IEP. In 2022, Claimant continued to have outbursts at school, attempted to elope, and destroyed property. By 2023, Claimant had mostly stopped engaging in this behavior at school. (*Ibid.*)

24. As reported by Claimant's parents, she benefits from the accommodations she receives at her current school, including the very small class size, extended time, and counseling. (Exh. A.) At home, in the absence of a more structured environment, however, Claimant does not perform non-preferred tasks, such as personal hygiene, exercise, take her medication, or homework. She will refuse to go to school after not completing her homework and realizing she is falling behind. Claimant's outbursts have decreased over the past years, but, when frustrated, she continues to resort to screaming, door-slamming, and physical and emotional intimidation. (*Ibid.*)

25. Claimant's medications include 30 mg of Lexapro, which is beyond the maximum daily dose. Lexapro is a medication used to treat major depressive disorder and generalized anxiety disorder. Claimant is also prescribed 70 mg of Vyvanse (the

maximum daily dose) for ADHD and an additional 20mg of Adderall in the afternoon for ADHD. While the medications have been prescribed are at the maximum doses for years, Claimant continues to demonstrate measurable limitations in her daily living skills on all assessments.

26. Claimant's parents applied for regional center services because of concerns Claimant is in danger of not being able to complete higher education or live independently, despite her intelligence and potential, due to her substantially disabling ASD in multiple areas of major life activity. (Exh. A.)

EXPERT HEARING TESTIMONY OF DR. GRANTZ

27. Dr. Grantz is a California licensed clinical neuropsychologist with expertise in ASD and associated areas of difficulty. She completed specialty training through Oregon Health & Sciences University. Dr. Grantz worked at the UCLA CAN Clinic and was an attending psychologist prior to starting her own private practice. She specializes in diagnostic assessment and supporting individuals with ASD. Dr. Grantz convincingly testified as an expert at hearing regarding Claimant's substantially disabling ASD. Her hearing testimony was consistent with the findings of her 2019 UCLA Semel report based on her assessment of Claimant when Claimant was 13 years-old. (Exh. A1.)

28. Dr. Grantz administered various assessments, most notably the ADOS-2, concluding Claimant met the cut-off for ASD. (Exh. A1.) Dr. Grantz's ASD diagnosis of Claimant was consistent with Dr. Levy-Wright's diagnosis. Dr. Grantz's summarized DSM 5 diagnostic conclusions for Claimant in the area of social communication and social interaction across contexts: deficits in social-emotional reciprocity; nonverbal communicative behaviors used for social interaction; and developing, maintaining, and

understanding relationships. In the area of restricted, repetitive patterns of behaviors, interests, or activities, Dr. Grantz reported the following findings: stereotyped or repetitive motor movements; insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; highly restricted, fixated interests that are abnormal in intensity or focus; and, hyper-hypo reactive to sensory input or unusual interest in sensory aspects of the environment. Dr. Grantz's diagnostic conclusions included Claimant's symptoms were present in the early developmental period, but may not have become fully manifested until social demands exceeded limited capacities, or were masked by learned strategies in later life. Further, Dr. Grantz concluded Claimant's symptoms caused clinically significant impairment in social, occupational, or other areas of current functioning. (*Ibid.*)

29. Dr. Grantz diagnosed Claimant with deficits in verbal/nonverbal social communication skills at Severity Level 2, Requiring Substantial Support, and rituals and repetitive behaviors at Severity Level 2, Requiring Substantial Support, consistent with Dr. Levy-Wright's diagnosis of Claimant. (Exh. A1, p. B23.) Dr. Grantz also diagnosed Claimant with ADHD, combined presentation; Major Depressive Disorder in partial remission; and Generalized Anxiety Disorder. (*Id.*)

30. Notably, Dr. Grantz opined Claimant's above-average intelligence did not preclude her from being substantially disabled in her daily functioning by her ASD, writing:

Claimant's "[S]trong intellectual abilities have likely helped support [Claimant's] functioning and potentially masked the full extent of [Claimant's] areas of weakness. As expectations have increased, however, strong cognitive abilities are no longer able to fully compensate for areas of

difficulty, and [Claimant's] daily functioning has dramatically decreased.

(Exh. A1, p. B22.)

31. Dr. Grantz opined Claimant ASD was substantially disabling in social communication, interfering with Claimant's day-to-day communication, and she expected the deficits in social communication to continue. Dr. Grantz explained that Claimant's high intelligence and the ability to expressively communicate did not mean that she would be able to use language on a day-to-day basis to effectively communicate with other people because of the deficits and barriers caused to Claimant's social communication by her ASD. Based on Dr. Grantz's findings, Claimant's receptive and expressive communication are negatively impacted by her ASD, such that, despite Claimant's strong "tested" verbal abilities, her ASD impacts her substantially in her ability to communicate functionally with other individuals. As a result of Claimant's ASD, she is impaired in her ability to process information and understand other individuals without support. Claimant's communication deficits, Dr. Grantz opined, would affect Claimant's ability to access work, interpersonal relationships, and complete medical or other appointments.

32. Dr. Grantz opined Claimant's restricted and rigid interests and patterns of behavior were also substantially impairing; causing agitation and outbursts in the home and school environments. Regarding self-care, Dr. Grantz opined, based on Claimant's result on the Vineland, which was less than 54%, that Claimant's adaptive functions, were substantially disabling and an area of serious concern. (WRC also determined Claimant was substantially disabled in the area of self-care due to her ASD.)

33. Dr. Grantz opined Claimant's deficits in social communication and restricted interests and patterns of behavior were primarily explained by Claimant's ASD, not her other disorders, writing:

While individuals? with anxiety, depression, and ADHD may demonstrate some areas of social difficulty, they do not characteristically demonstrate significant deficits in insight into the nature of social relationships and ability to sustain friendships. Additionally, the presence of restricted interests and repetitive patterns of behavior are not found in anxiety, depression, or ADHD, and are clear characteristics of [ASD]. [Claimant] clearly meets criteria for ASD, and will require significant support and intervention to ensure [Claimant] build(s) the skills necessary to support daily functioning and increased independence throughout [her] life.

(Exh. A1, p. B22.)

34. Dr. Grantz's reviewed Dr. Levy-Wright's report and other assessments of Claimant submitted into evidence, and observed Claimant's self-care was an ongoing challenge, noting concerns for Claimant's adaptive functioning as an area of substantial disability. On the Vineland-3, Dr. Grantz found Claimant's Adaptive Behavior Composite to be in the first percentile. While Dr. Grantz did not assess Claimant's transition to independent living when she assessed Claimant based on Claimant's age at the time of her 2019 assessment, she opined that, based on the subsequent assessments of Claimant (i.e., Dr. Levy-Wright's report, the IEE, BHUSD IEPs, and WRC findings), Claimant's ongoing adaptive function deficits, the ongoing need for academic support, and continuing deficits in social communication, it was

likely Claimant could not transition to independent living and would be substantially disabled in that area. (Dr. Grantz's VABS-III and BRIEF tests (Exh. A1, pp. 23-25); Dr. Turner's BRIEF-2 test (Exh. C, pp. 31-34); and Dr. Levy-Wright's VABS-III test (Exh. B at pp. 12, 17, 23, 30, & 47-48).)

35. While conceding that the data on autistic individual's economic self-sufficiency was poor, Dr. Grantz opined that, based on Claimant's documented and reported difficulty initiating tasks, such as her homework, it was likely Claimant would be substantially disabled in the area of economic self-sufficiency based on her ASD. Dr. Grantz explained Claimant's high intelligence was not enough for her to live independently over time because of the functional impairment to essential things, like the ability to be employed, caused by her ASD symptoms.

36. Dr. Grantz explained Claimant's capacity to function, likely attributable to her above-average intelligence, has been outstripped by the expectations of daily life, such that her ASD deficits were and would be substantially disabling. Dr. Grantz opined Claimant's challenges were attributable to her ASD not to her other mental health challenges, explaining Claimant's autistic brain was shaping everything about Claimant, such that her depression and anxiety could not be considered separate and apart in an autistic person. Dr. Grantz explained co-morbidities were extremely common in autistic individuals, occurring at a higher rate than in other populations. She further opined trans-autistic individuals, like Claimant, faced additional challenges. In sum, Dr. Grantz rejected WRC's view Claimant's functional deficits could be attributed to her mental health challenges, rather than her ASD.

Expert Hearing Testimony of Dr. Turner

37. Jerry Turner, Ph.D. is a multi-state licensed educational psychologist and consulting psychologist specializing in dyslexia, extreme behavior and autism who testified as an expert at hearing. Dr. Turner performed the 2022 IEE assessment of Claimant as part of her 2022 IEP. (Exh. C.)

38. As part of his evaluation of Claimant, Dr. Turner conducted the Behavior Rating Inventory of Executive Functioning (BRIEF-2). In summary, Claimant obtained a Global Executive Composite score of 52.0, which is in the lower extreme range. (Exh. C.) Claimant also received scores ranging from well below average to lower extreme range in the areas of planning, initiation, inhibition, and shifting on the BRIEF-2. (*Id.*) Dr. Turner's assessment data corroborates Dr. Grantz's conclusion Claimant has substantial functional limitations in self-direction.

39. Dr. Turner ultimately found Claimant eligible for special education services under the category of Emotional Disturbance (ED) and Other Health Impairment (OHI). (Exh. C, pp. B130-B131.) Dr. Turner explained Claimant was not found eligible for special education services under the category of autism based on the restrictions Dr. Turner was required to follow pursuant to the Individuals with Disabilities Education Act's (IDEA's) limited definition of autism that applied to Claimant's IEE evaluation. Dr. Turner opined that "limiting [Claimant's] qualification to a definition of autism, especially one that differs from the accepted standard of the Diagnostic Statistical Manual – fifth edition (DSM-V), is following the letter of the law while missing the spirit." (Exh. C, p. B131.)

40. Dr. Turner opined that for purposes of regional center eligibility based on ASD, which follows DSM-V, Claimant was substantially disabled in three out of seven

categories, and was eligible for regional center services. Dr. Turner opined Claimant's patterns of expressive language was consistent with autism. For example, during his assessment of Claimant, she spoke words that were not always offensive, but were delivered in an offensive way, based on, for example, Claimant's tone, of which she was unaware. Dr. Turner explained the autistic brain commonly presents with this expressive language deficit.

41. Regarding receptive language, Dr. Turner observed Claimant would become frustrated because she did not understand things perfectly due to the limitations in her executive functioning. Dr. Turner explained Claimant's receptive language limitations negatively impacted Claimant's social relationships in the classroom, with several classmates being offended by what Claimant as saying. Dr. Turner opined Claimant's unintended shortness with individuals was likely to impact her working, social, and educational relationships.

42. In the area of learning, Dr. Turner explained the ways in which Claimant's ASD substantially impacts her ability to learn, opining Claimant's measured executive functioning deficits make it more difficult for her to initiate a homework assignment, plan a long-term assignment, and do an assignment she's not interested in performing; areas students with autism struggle with significantly.

43. In the area of economic self-sufficiency, Dr. Turner opined that based on Claimant's current level of functioning and spending habits (i.e., spending any money she has in her possession and subjecting herself to scams on at least one occasion), she will not be able to budget and ensure her money lasts.

44. Dr. Turner disagreed with WRC's contention Claimant is impaired by her mental health conditions. He opined Claimant is significantly impacted by her ASD,

noting the data on Claimant's ability to self-care, effectively get along with others, and/or hold down a job soon when she turns 18. Dr. Turner explained that in autistic individuals, like Claimant, who exhibit mental comorbidities, the autistic brain is the starting point. Specifically, when considering depression, you cannot separate depression, but must look at it from the starting point of being autistic depression. With anxiety, similarly, it must be considered as autistic-induced anxiety.

FATHER'S HEARING TESTIMONY

45. Claimant's father credibly testified at hearing, giving specific examples of how Claimant is substantially disabled in at least three major life activities.

46. Regarding self-care, Claimant's father testified about Claimant's inability to independently care for herself in areas such as hygiene and prescription medication management. Claimant's parents cannot get Claimant to shower or change her underclothes more than about once a week. Claimant brushes her teeth about once a week. Claimant cannot take the several medications she is prescribed on her own. Claimant's father described the process he engages in to ensure Claimant takes her daily medication, including the medication she recognizes is important to her gender health; he places the medication in her hand and watches her take it or else she neglects taking her medication.

47. Regarding receptive and expressive language, Claimant's father described Claimant's strained relationship with others based on her difficulty with nuanced communication. For example, Claimant's father described the challenges with communicating with Claimant because her conversations are one-sided, she will only talk about things that are important to her, and frequently interrupts others at inappropriate times.

48. Regarding learning, Claimant's father testified Claimant resists doing her homework on an ongoing basis. She fails to complete long-term projects and will then withdraw and attempt to avoid the problem by refusing to go to school. Claimant's grades are negatively impacted by her behavior, resulting in low grades for subjects in which she has acumen.

49. Regarding capacity for independent living, Claimant's father testified that based on Claimant's self-care issues, he can't see Claimant living or caring for herself independently within the next 10 years, citing Claimant's inability to budget, impulsive shopping, and gullibility in falling for scams.

50. Regarding economic self-sufficiency, Claimant's father testified about his observations, including Claimant's inability to manage or save money to cover future wants or expenses. Claimant and her twin brother, who does not have ASD, receive the same amount of allowance. However, unlike her twin brother, Claimant cannot maintain an adequate bank balance, spending all the money she receives, leading her parents to keep money from her so that her account is not overdrawn. Further, Claimant's capacity to obtain and maintain employment is an area of concern for Claimant's father because of his prediction, based on his own experience of living and communicating with Claimant, that she will have trouble communicating with managers and/or customers without offending them or getting offended and withdrawing and isolating. Claimant's father did not agree with WRC's determination she is ineligible for regional center services.

Ultimate Finding

51. In balance, Claimant's experts' hearing testimony (Dr. Grantz and Dr. Turner) that Claimant's ASD was substantially disabling was more credible and

persuasive than Dr. Kelly's assertions to the contrary. Both Dr. Grantz and Dr. Turner testified as experts at hearing and based their opinions on their personal observations of Claimant. Dr. Kelly, on the other hand, never met Claimant and did not testify as an expert at hearing. Even if Dr. Kelly had been designated as an expert at hearing by WRC, his testimony would have been found as less persuasive based on the weight of the credible evidence presented by Claimant that she is substantially disabled in at least three areas of her life by her ASD.

52. In sum, WRC and Claimant agree Claimant is substantially disabled in the area of self-care. Claimant's mobility is not substantially disabling. WRC did not consider capacity for independent living and economic self-sufficiency based on the fact Claimant's is a minor. Both the Lanterman Act and the regulation direct an evaluating party to consider an individual's age when evaluating the categories of major life activity to determine eligibility. Based on the evidence presented by Claimant, it was established Claimant is substantially disabled in the areas of capacity for independent living and economic self-sufficiency.

53. WRC's assertion Claimant's ASD is not substantially disabling because it is not the sole cause of her deficits, but rather could be caused by Claimant's comorbidities, such as depressive and anxiety, is speculative and unsupported by convincing empirical evidence. (*See Tri-Counties Ass'n for the Developmentally Disabled, Inc. v. Ventura Cnty. Pub. Guardian*, 63 Cal.App.5th 1129, 1136 (2021) ("[T]he regulations do not deny services to an individual with a psychiatric disorder, so long as the individual can also establish a qualifying condition under the Lanterman Act.") Further, WRC's position that Claimant's measured intelligence argues against a finding of eligibility based on ASD is unconvincing based on Claimant's evidence that, despite

her intelligence, she is also substantially disabled by her ASD in the areas of self-care, learning, and expressive and receptive language.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's request for regional center services, as set forth in Factual Findings 1 through 53, and Legal Conclusions 2 through 7.

2. Claimant bears the burden of proving, by a preponderance of evidence, that she is eligible for government benefits or services. (See Evid. Code, § 115, see also *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161-162.)

3. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) To establish eligibility for regional center services under the Lanterman Act, Claimant must show she suffers from a developmental disability that "originates before an individual attains 18 years, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for that individual." (§ 4512, subd. (a).)

4. There is no dispute Claimant suffers from the developmental disability of ASD. The only issue is whether Claimant's ASD constitutes a "substantial disability." "Substantial disability" is defined as "the existence of significant functional limitations in three or more of the following areas of major life activity as determined by a regional center, and as appropriate to the age of the person" in the following categories: (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency. (§ 4512, subd. (1).)

5. California Code of Regulations, title 17, section 54001, subdivision (a), also defines "substantial disability" as "(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age: (A) Receptive and expressive language; (B) Learning; (C) Self-care; (D) Mobility; (E) Self-direction; (F) Capacity for independent living; (G) Economic self-sufficiency."

6. Given Factual Findings 1 through 53, Claimant established, through a preponderance of the evidence, she has a developmental disability that constitutes a substantial disability and is likely to indefinitely continue. Claimant presented evidence from multiple sources, including the WRC's Dr. Levy-Wrights evaluation and independent evaluations, indicating she is substantially disabled in at least three areas of major life activity: self-direction, self-care, learning, capacity for independent living, economic self-sufficiency, and receptive and expressive language. Accordingly, Claimant is eligible for regional center services under the Lanterman Act.

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ORDER

Claimant's appeal is granted. WRC's decision denying Claimant's eligibility for regional center services is reversed.

DATE:

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Pursuant to Welfare and Institutions Code section 4713, subdivision (b), either party may request in writing a reconsideration within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the decision.